Pengaturan Pajak Transaksi Elektronik dan Prinsip Nondiskriminasi dalam Perjanjian Perdagangan Internasional: Suatu Kajian Perbandingan antara Indonesia dan Uni Eropa = Digital Services Tax Regulation and The Principle of Non-discrimination in International Trade Agreement: A Comparative Study between Indonesia and The European Union

Mutiara Elisabet, author

Abstrak

Indonesia dan Uni Eropa telah mengambil langkah unilateral untuk menerapkan pajak layanan digital. Skripsi ini mengkaji (i) pengaturan pajak layanan digital di Indonesia dan Uni Eropa serta (ii) apakah pengaturan pajak layanan digital tersebut melanggar kewajiban nondiskriminasi negara anggota WTO dalam GATS. Melalui penelitian hukum yuridis normatif dan pendekatan perundang-undangan, komparatif, dan kasus, dapat disimpulkan bahwa pertama, pajak layanan digital dikenal di Indonesia sebagai pajak transaksi elektronik dan diatur dalam peraturan perundang-undangan yang menerapkan kriteria kehadiran ekonomi signifikan. Di Uni Eropa, pajak layanan digital diatur melalui Council Directives, di mana pengaturan pengenaan pajak tersebut menggunakan metode ring-fencing dan kriteria significant economic presence. Kedua, kewajiban nondiskriminasi dalam GATS terdapat dalam Pasal II tentang Most-Favoured Nation dan Pasal XVII tentang National Treatment serta yurisprudensi yang relevan dari putusan WTO. Pengaturan pajak layanan digital Indonesia dan Uni Eropa tidak bersifat diskriminatif, sebab berdasarkan indikator-indikator yang ada, tidak terbukti adanya diskriminasi de jure maupun de facto. Saran berdasarkan kesimpulan tersebut yaitu bagi Indonesia dan Uni Eropa untuk mempersiapkan bukti yang menunjukkan tidak adanya perlakuan kurang menguntungkan terhadap negara anggota WTO tertentu dalam praktik pengenaan pajak layanan digital oleh Indonesia dan Uni Eropa apabila terdapat negara anggota yang mengajukan gugatan diskriminasi ke WTO. Selanjutnya, apabila terdapat negara anggota yang mengambil tindakan retaliasi, Indonesia dan Uni Eropa disarankan untuk mengajukan gugatan diskriminasi ke WTO atas tindakan retaliasi tersebut.
.....Indonesia and the European Union (EU) have taken unilateral actions to implement digital services tax. This thesis examines (ii) digital services tax regulation in Indonesia and the EU and (ii) whether the digital services tax regulation violates the non-discrimination obligation of WTO members according to the GATS. Through conducting a judicial normative legal research whilst applying a statutory, comparative and case-study approach, it can be concluded that firstly, digital services tax in Indonesia is known as an electronic transaction tax and is regulated by law, which implements significant economic presence criteria. In the European

Union, digital services tax is regulated through the Council Directives, in which the regulation implements ring-fencing method as well as significant economic presence criteria. Secondly, the non-discrimination obligations in GATS are promulgated in Article II concerning Most-Favored Nation Treatment and Article XVII concerning National Treatment as well as relevant jurisprudence of WTO case laws. Indonesia and the EU's digital services tax regulation are not discriminatory, because based on existing indicators, the existence of both de jure and de facto discrimination is not proven. The suggestion would be for Indonesia and the EU to provide evidence that shows the absence of unfavorable treatment of certain WTO member states in digital services tax practices by Indonesia and the EU, in the event that there are member states who decides to challenge the measures to the WTO. Subsequently, in the event that certain member states decide to take retaliation measures, it is suggested that Indonesia and the EU challenge said measure to the WTO.